
**State Government Operations &
Accountability Committee**

HB 1750

Brief Description: Modifying primary election law.

Sponsors: Representatives Shabro, Kessler, Haigh, Moeller, Simpson and Linville; by request of Secretary of State.

Brief Summary of Bill

- Implements the nonpartisan blanket primary system enacted by Initiative 872.
- Changes the manner in which minor party candidates may get on the general election ballot.
- Changes the manner in which voids and vacancies for partisan offices are handled.
- Changes the date when precinct committee officers are elected.
- Makes technical corrections.

Hearing Date: 2/18/05

Staff: Jim Morishima (786-7191).

Background:

I. Washington's Primary Election System

A. The Blanket Primary System

There are many methods that states use to conduct their primary elections. Between 1935 and 2004, Washington utilized a method known as a blanket primary. In such a primary, all candidates are listed on the ballot and voters may vote for any candidates they choose regardless of party affiliation.

In 2000, the U.S. Supreme Court ruled that California's blanket primary was unconstitutional. California Democratic Party v. Jones, 530 U.S. 567 (2000). According to the court, the blanket primary system violates a political party's associational rights because it allows people not affiliated with the party to choose the party's nominee. In its decision, the Supreme Court implied

that a nonpartisan blanket primary, i.e., one where the top two candidates go on to the general election regardless of party affiliation, may survive constitutional muster. This is because, in such a primary, voters are not choosing a party's nominee.

In 2003, the Ninth Circuit Court of Appeals extended the U.S. Supreme Court's decision in Jones to Washington's blanket primary system, rendering it unconstitutional. Democratic Party of Washington State v. Reed, 343 F.3d 1198 (2003). In 2004, the U.S. Supreme Court denied Washington's appeal of the Ninth Circuit opinion.

B. Chapter 271, Laws of 2004 (partially vetoed)

1) Two Types of Primaries

In 2004, the Legislature enacted ESB 6453, which enacted two types of primaries. First, the act enacted a nonpartisan blanket primary (or "qualifying primary"), like the one described by the U. S. Supreme Court in Jones. Under this system, all candidates would be listed on the primary ballot. Voters could then vote for any candidates on the ballot, with the top two candidates going on to the general election regardless of party affiliation.

Second, the act enacted a primary system to be used in case a court of competent jurisdiction ruled that candidates cannot self-designate party affiliation when they file for office. Under this primary system, known as an open primary with private choice, voters must affiliate with one political party for the day and may only vote for candidates from that party. The voter's choice of party remained private.

2) The Governor's Veto

After ESB 6453 passed the Legislature, the Governor vetoed the provisions creating the nonpartisan blanket primary. This left only the provisions creating the open primary with private choice, which was the primary system that was utilized in the 2004 primary election.

C. Initiative 872

In 2004, the voters approved Initiative 872, otherwise known as the "People's Choice Initiative." The initiative enacts a nonpartisan blanket primary, similar to the one the Governor vetoed in ESB 5453. Under this primary system, candidates may express a party or independent preference on the declaration of candidacy, which must be shown on the primary ballot. Voters may then vote for any candidate on the primary ballot regardless of the party preference or affiliation of either the candidate or the voter. The top two candidates, regardless of party affiliation, then go on to the general election as long as they each received at least one percent of the votes cast for the office in question.

II. Major and Minor Parties

A. Definition of Major Party

A major party is a political party of which at least one nominee for president, vice-president, United States senator, or a statewide office received at least 5 percent of the total vote cast at the last preceding state general election in an even numbered year. This definition relates to the definition of "caucus political committee" in the Public Disclosure Act, which means a political

committee organized by members of a major political party in the state Senate or state House of Representatives.

B. Minor Parties

To appear on the general election ballot, minor parties go through a nominating convention process at the end of June. Initiative 872 does not address how minor party candidates will get on the general election ballot under the nonpartisan blanket primary system.

III. Voids and Vacancies

If there are no candidates for nonpartisan office because no one filed during the regular filing period, or if a nonpartisan office that was not scheduled to be on the ballot becomes vacant any time between the regular filing period and six weeks before the primary, a special filing period is opened and the position appears in the primary. If the nonpartisan void in candidacy or vacancy in office occurs within six weeks of the general election, a special filing period is opened and the position appears in the general election. If the nonpartisan void in candidacy or vacancy in office occurs within six weeks of the general election, the election lapses and the office is stricken from the ballot.

If there are no candidates for a partisan office from one of the major parties because no one from that party filed during the regular filing period, the party may appoint a candidate to fill the vacancy on the ticket. Under Initiative 872, if a partisan office that was not scheduled to be on the ballot becomes vacant any time between the regular filing period and six weeks prior to an election (the law prior to Initiative 872 was six weeks prior to the primary), a special filing period is opened and the position appears in the primary or general election.

IV. Precinct Committee Officer (PCO) Elections

Elections for PCOs, who are publicly elected members of major political parties, are held at the primary, as opposed to the general election. However, prior to the passage of ESB 6453, PCOs were elected at the general election.

V. Miscellaneous Technical Issues

When sections of ESB 6453 were vetoed, several "repealer" sections were eliminated. This has resulted in several duplicative sections and citation errors in the election law. Also, the timing of Initiative 872 and ESB 6453 has resulted in the initiative amending some sections of law that were repealed by ESB 6453.

Summary of Bill:

I. Washington's Primary Election System

A variety of changes are made to implement the nonpartisan blanket primary system enacted by Initiative 872:

- References to the primary being a "nominating" process are changed to reflect that the primary is a "qualifying" process.
- Sections enacting the open primary with private choice model (from ESB 6453) are repealed.
- Provisions of current law are harmonized with the provisions of the initiative.

It is stated that a candidate's indication of party preference when filing for office is not an endorsement or nomination by the party in question. The sole purpose of allowing a candidate to indicate a party preference is to provide the voters with a brief description of each candidate's political philosophy. If a court of competent jurisdiction rules that a political party has the right to control the use of its name, the candidate may provide a three word description of his or her political philosophy, instead of party preference.

II. Major and Minor Parties

A. Definition of Major Party

The definition of a major political party is changed to a political party identified on the declaration of candidacy of at least one candidate for statewide office receiving at least 5 percent of the total votes cast for that office at the last primary or general election in which the office of governor appeared on the ballot. The definition of caucus political committee in the Public Disclosure Act is changed to mean a political committee organized and maintained by members of the majority and minority caucuses of the state Senate or state House of Representatives.

B. Minor Parties

The manner in which minor party candidates appear on the general election ballot is changed. For offices other than President and Vice-President, minor party candidates get on the general election ballot the same as any other candidate; i.e., by being one of the top two candidates in the primary election. Minor party candidates for President and Vice-President may still use the party convention process to get on the general election ballot.

III. Voids and Vacancies

The provisions relating to voids and vacancies for partisan offices are repealed. Instead, the provisions relating to voids and vacancies for nonpartisan offices are made applicable to both partisan and nonpartisan races. The changes made by Initiative 872 relating to the three day filing period for vacancies for partisan offices are repealed.

IV. Precinct Committee Officer (PCO) Elections

Elections for PCOs will be held in general elections, which is when such elections were held prior to ESB 6453.

V. Miscellaneous Technical Issues

Technical errors caused by the partial veto of ESB 6453 are corrected. Sections of Initiative 872 that amend repealed sections are repealed. Changes are made to existing law to reflect the repealed sections of Initiative 872.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.